

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL I BROWN-SEALS,

Petitioner,

v.

JAQUEZ FRANCISCO,

Respondent.

Case No. [16-cv-04763-PJH](#)

**ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS AND
FOR PETITIONER TO SHOW CAUSE**

Re: Dkt. No. 3

United States District Court
Northern District of California

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also applied for leave to proceed in forma pauperis. Petitioner challenges a 2005 conviction from the Lake County Superior Court. However, court records indicate that petitioner already filed a habeas petition in this court challenging the same conviction. *See Seals v. Jaquez*, Case No. 10-cv-3707-PJH. Petitioner's case was dismissed with prejudice as barred by the statute of limitations and was affirmed by the Ninth Circuit. This appears to be a successive petition.

"A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . ." 28 U.S.C. § 2244(b)(2). This is the case unless,

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to

1 establish by clear and convincing evidence that, but for
2 constitutional error, no reasonable factfinder would have
3 found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

4 "Before a second or successive application permitted by this section is filed in the
5 district court, the applicant shall move in the appropriate court of appeals for an order
6 authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). It
7 does not appear that petitioner has received authorization from the Ninth Circuit to file
8 this petition, therefore he will be ordered to show cause why this case should not be
9 dismissed.

10 CONCLUSION

11 1. Petitioner's motion for leave to proceed in forma pauperis (Docket No. 3) is
12 **GRANTED.**

13 2. Petitioner must show cause by **September 22, 2016**, why this case should
14 not be dismissed as successive. Failure to file a response will result in this case being
15 dismissed.

16 **IT IS SO ORDERED.**

17 Dated: August 29, 2016



18 PHYLLIS J. HAMILTON
19 United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL I BROWN-SEALS,
Plaintiff,
v.
FRANCISCO JAQUEZ,
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CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk,
U.S. District Court, Northern District of California.

That on August 29, 2016, I SERVED a true and correct copy(ies) of the attached,
by placing said copy(ies) in a postage paid envelope addressed to the person(s)
hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said
copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael I Brown-Seals ID: #V-77488
Pelican Bay State Prison C-1-A#102 SHU
P.O. Box 7500
Crescent City, CA 95532-7000

Dated: August 29, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Nichole Peric, Deputy Clerk to the
Honorable PHYLLIS J. HAMILTON